

1984 S.C. Op. Atty. Gen. 212 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-89, 1984 WL 159896

Office of the Attorney General

State of South Carolina

Opinion No. 84-89

July 26, 1984

*1 RE: Opinion Request No. 1138 Constitutional Law, Statutes

Victor S. Evans
Chief Counsel
S. C. Department of Highways and Public Transportation
Post Office Box 191
Columbia, South Carolina 29202

Dear Mr. Evans:

You have asked for an opinion as to the effective date of Act 420, which was approved by the Governor on May 31, 1984. Act 420 provides that it shall become effective on January 1, 1984. However, it was not presented to the Governor for his approval until after that date.¹ The question is whether the earlier date, set by the legislature, controls or whether the effective date is the date upon which the bill was approved by the Governor.

The answer to your question is found in [Article IV, § 21 of the Constitution of South Carolina](#). That section states, in pertinent part:

'Every bill or joint resolution which shall have passed the General Assembly . . . shall, before it becomes a law, be presented to the Governor . . . (emphasis added).'

An application of that constitutional provision to the matter at hand can yield only one result. That is, Act 420 of 1984 could not have become law on January 1, 1984 as specified within its provisions because it had not yet been presented to the Governor.

After the above determination is made the analysis leads to the question of whether the Governor's approval on May 31st gave effect to the Act retroactively to January 1, 1984. Such a construction would be highly unusual because the majority of jurisdictions in this country apply a strict rule of construction against retrospective operation of statutes. [Sutherland on Statutory Construction](#), 4th Edition, Volume 2, § 41.04, 73 Am.Jur.2d, [Statutes](#), § 350. This is especially true, as in the instant case, where a criminal penalty is involved. This, of course, raises the issue of an ex post facto law. [Bouie v. City of Columbia](#), 84 S.Ct. 1697, 378 U.S. 347, 12 L.Ed. 894 (1964)

If Act 420 were construed to be retroactive to January 1, 1984, it would have the effect of retrospectively rendering an act illegal during the period between January 1 and May 31st which was not previously illegal. This fits within the classic definition of an ex post facto law. [Calder v. Bull](#), 3 U.S. 386, 1 L.Ed. 648 (1798). We do not favor this construction because statutes which would be ex post facto if construed retroactively will, if possible, be construed prospectively only. 16 Am.Jur.2d, [Constitutional Law](#), § 641.

For the reasons stated above, it is the opinion of this office that Act 420 of 1984 became effective on May 31, 1984, when it was approved by the Governor. Any construction which renders the Act effective before that date would also render it ex post facto, and, therefore, unconstitutional.

We trust that this has sufficiently answered your question. If not, please feel free to contact us.

Sincerely,

Clifford O. Koon, Jr.

*2 Assistant Attorney General

Footnotes

¹ Your opinion request letter assumes that there was no printer's error.

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